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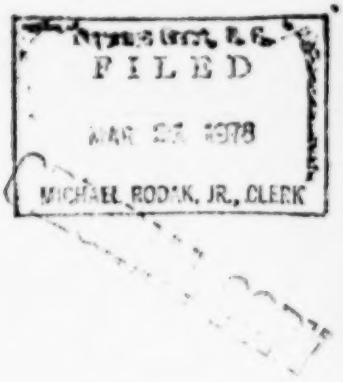

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO.-77-5898

MAURICE PROCTOR,

PETITIONER,

VS

WARDEN, MARYLAND PENITENTIARY

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Pet's REPLY BRIEF, IN TRAVERSE TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY COMMENTS

THIS BRIEF, IS IN TRAVERSE TO THE OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI, PURSUANT TO RULE 40, RULES OF THE SUPREME COURT OF THE UNITED STATES, MOREOVER: BECAUSE OF THE FACT THAT PETITIONER IS INDIGENT HE DOES NOT HAVE A COPY OF ANY OF HIS TRANSCRIPTS FOR ANY OF THIS PROCEEDING AND HE HAS BEEN DENIED ACCESS TO THEM BY THE RESPONDANT , THEREFORE, PETITIONER RESPECTFULY BESEECH THIS HONORABLE COURT'S INDULGENCE FOR HIS SHORT-COMING IN SO FAR AS ARTICULATING HIS CLAIMS . THE QUESTION WHETHER PETITIONER HAS DELIBERATELY BY-PASSED A STATE REMEDY NOT AVIALABLE TO HIM AT THE TIME HE APPLIED FOR HEBEAS CORPUS RELIEF REASONABLE SUGGEST THAT THE DISTRICT COURT SHOULD HAVE CONDUCTED AN EVIDENTIARY HEARING TO HEAR AND DETERMINE THE FACTS IN DISPUTE BETWEEN THE PARTIES.

OPINION BELOW

The United States Court of Appeals for the Fourth Circuit Dismissed the Petitioner's Appeal in an unpublished decision decided August 11, 1177, No. 76-8315 pursuant to 42 U.S.C. Section 1983 Jurisdiction.

JURISDICTION OF T HE COURT

This Honorable Court's Jurisdiction is Invoked under 28 U.S.C. Section 1254 (1) As to all issues as presented by the Petitioner in this Action.

QUESTIONS PRESENTED

(I) THAT PETITIONER'S GUILTY PLEA WAS UNCONSTITUTIONAL BECAUSE HE WAS NOT FULLY APPRAISED BY THE TRIAL COURT OR HIS COUNSEL AGAINST COMPULSORY SELF* INCRIMINATION.

(II) THAT PETITIONER'S TRIAL COUNSEL WAS INCOMPETENT AND DID NOT PROVIDE HIM WITH GENEUINE REPRESENTATION VIOLATED HIS FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO EQUAL PROTECTION AND DUE PROCESS.

(III) THAT PETITIONER'S HOME WAS ILLEGALLY SEARCHED B Y A FATALLY DEFECTIVE SEARCH WARRANT THE PROSECUTION ENGAGED IN MELICIOUS MISCONDUCT.

(IV) THAT PETITIONER WAS DENIED A FAIR AND COMPLETE EVIDENTIARY HEARING IN THE COURT BELOW AND THE STATE COURTS.

STATEMENT OF CASE

1- Petitioner takes exception to Respondent's Statement of Case as to issues he raised at Post-Conviction, to wit, a. illegal search and seizure; b. inadequacy of counsel; c. illegal sentence. The Respondent does not indicate in his Statement of Case Petitioner's supplemental contentions filed March 12, 1975, in the Criminal Court of Baltimore.

2- Petitioner stipulates that the United States District Court For The District of Maryland and The United States Court of Appeals for The Fourth Circuit erroneously denied and reviewed his petition under the wrong Jurisdiction,i.e. 42 U.S.C. 19 83 Section in opposed to the Habeas Corpus Act.

3. Petitioner Files this Reply Brief in Response to Respondent,to facilitate this Honorable Court in correcting some of the misleading information by the Respondent in his opposition Brief filed March 3,1978 to this Honorable Court.

STATEMENT OF FACTS

PETITIONER, Generally concurs with the excerpts of the Trial and Post Conviction Transcripts , But Respectfully request the Court to take Judicial Notice that petitioner has never had the opportunity to review or have access to these transcript but must relie upon what excerpts and portions as submitted to the courts for information pertinent to the issues being contested . As for what has been submitted to this Honorable Court , Petitioner takes exception to the following :

1- That the Trial Court personally advised Petitioner to all of his Consitutional Rights , or to the Voluntariness of his Guilty Plea.

2.That the Trial Court didnot personally advised Petitioner of his right against compulorary sel f-incrimination, or that no unfavorable inference would be drawn if he elect not to stand trial.

3.That the Trial Court Record is Silent as to advising Petitioner of his Rights.

4.That the Guilty Plea was void because of coercion, through misunderstanding, inducement,threats, promise,fear.

5. Counsel was ineffective and incompentent because he fail to fully advise petitioner of his constitutional rights and protect his best interest.

6. Counsel was ineffective and incompentent because he was ill-prepared to go-forward with trial, if guilty plea bargain had failed.

7. That Counsel represented petitioner only on the 4 criminal charges which he pleaded guilty, excepting the conspricy charge which was stetted against him and nol-pros against his wife, and not the allege 7 or 8 criminal charges which the Respondent would have this Honorable Court to believe.

8. That petitioner wife is a law-abiding person or citizen of the United States , and has never between in conflict with the laws thereof, that she at no time was engage any illicit criminal activiests with petitioner or anyone.

9.That Petitioner didnot have extensive knowledge and information of the plea bargain or plea negotiations as alleged by the respondent. Petitioner, left his legal defense in the hands of his counsel to protect his best interest.

10. Petitioner, didnot plea guilty solely to reap the benefit of having other charges pending against him dropped , stetted or nol- pros, that being one of the m any factors involved in his plea, one major factor was the involvement of placing criminal charges against Petitioner Wife, the other upon the advise of counsel, the promise of 10 years by counsel as a 1st offender.

11. That Petitioner didnot have a full, fair, and complete evidentiary hearing in state court.

12. Submume to counsel's ineffectiveness and incompentency, counsel fail to advise petitioner of his right to appeal;

13 .That it is Petitioner's belief, if the Respondent had submitted the post-conviction or the trial transcript in it's entirity it would disclose that the court fail to sufficiently advise petitioner of his constitutional rights.

14. That the evidence use as factual predicate for the plea bargain would have been excluded had petitioner gone to trial as fruit from a poisonous tree based on pre-trial procedures.

ARGUMENT (I)

PETITIONER'S GUILTY PLEA WAS UNCONSTITUTIONAL BECAUSE HE WAS NOT FULLY APPRAISED BY THE TRIAL COURT OR HIS COUNSEL AGAINST COMPULSORY SELF-INCRIMINATION.

" Before accepting a plea of guilty from a defendant, The Trial Judge must address him personally and determine that the Plea is made Voluntarily with understanding of the nature of the charge and a failure to follow this requirement vitiates the plea and entitles the defendant to plead anew" 5th Amendment rights of person, The Constitution of The United States of America Analysis and Interpretation Annotations of cases decided by the Supreme Court of The United States June 29,1972 page 1161 and note 12. ".McCarthy V United States, 394 U.S.459 (1969) This ruling interpreted Rule 11 of the Federal Rules of Criminal Procedure, But in Boykin V Alabama , 395 U. S. 238 , The Court Constitutionalized the Rule. "

In the vast wisiom of This Honorable Court and The United States Congress in forseeing the unseen clearly established principels as enuciated in Boykins and McCarthy, supra, which stands as beacon lights to dispel dark controversies involving issues which fail to be recorded, As this controversy regarding this instant case at bar, Petitioner, argues, that the Respondant has not complied with the Dictates or mandates of the Boykins and McCarthy holding therefore necessitating this petition . The Record is silent as to the Petitioner being personally advised of his constitutional rights before entering his guilty plea. His rights to witnesses, Jury Trial, Compulsory-self-incrimination, Mallory V Hogan , 378 U. S. 1 , inducement, threats, promise or coercion , terror and fear.

Federal Judges are required under rule (11) of the Federal Rules of Criminal Procedure to personally address the defendant in OPEN COURT, and on the Record as to the nature and consequences of his guilty plea. While the State and Federal Circuit Courts are divided on the issue and for the most quite continue to be a burning issue, most recently, the fifth (5th Circuit,) of the United States Court of Appeals held in U.S. V Adams, Ca.5 1/27/78 Crl 2460 ... " We now hold that the trial Court must personnally inform the defendant of the nature of the charge of which he pleas; the trial courts must also as we have held previously, determine that the defendant understand the nature of the charge. To inform a defendant of the nature of the charge must mean more than having the indictment read to the defendant of the technical charge ********* here the Judge did not personally inform the defendant that he ' Has the right to the Assistance of Counsel, the Right to confront witnesses against him, and the right not to be compelled to incriminate himself ' because of the delicate nature of this controversy; between courts ., it would be in the interest of the public to resolve this conflict ~~xxx~~ finally " The Petitioner contends that it appear that the trial judge seem to be over-zealous in finalizing

Plea-Bargain without hearing All of the Statement of Facts or Factual Basis for the Guilty Plea, reasonable suggest that the Trial Judge has Fail to adhere to the criterion as established by Boykins and McCarthy, Supra. Moreover, the Trial Judge Address Only the Trial Atterney in his very brief inquiry regarding the plea bargain and not the petitioner which in its self should void the plea bargain. The Record is unquestionable Silent as to the whether the petitioner knowin ;ly and intelligently relinquinging known rights as mandated by : Jeonsen V Zerbst, 304 U. S. 1020 , whether the petitioner was pleading guilty out of fear and threat of his Wife being prosecuted for a crime She has not committed . Haynes V Washingto n, who has never been exposed to crime or the stigmalization of criminal activities, or whether the petitioner was under the influrence of drugs, or narcotis, or whether the petitioner was promised, threaten, intimidated, harrassed, or coercied. Brown V Mississippi, 297 U. S. 278. Considering the Totality of the circumstances , the Bram Test, is the test to determine whether petitioner's guilty-plea was proper . Bram V United States, " Free and Voluntary; That is (it) must not be extracted by any sort of Threats or violence, nor obtained by any direct of implied promises, however, slight, nor by the exertion of any improper influrence " (emphasis added)

The Respondent suggest that had the Petitioner gone to trial on the outstanding charges , he may have been convicted on much serious charges However , in the course of withdrawing or overturning a void guilty plea, does not involve the question of guilty or innocence. See : Kercheval V United States , 274 U. S. 220. Moreover, Petitioner believes that he had a substantial chance of an acquital of the charges he now stand guilty of including the stetted charge. Furthermore, T he Respondent would have the court not to entertain this petition because of failure to exhaust appellate remedies, a remedy not known to the Petititioner at the time of seeking Hebeas Corpus Relief, and clearly a Issue submume to the Petitioner

claim of ineffectiveness and incompetency of Atterney. In a similar case, recently, this Honorable Court entertained it's ;Supervisor powers, in Smith V Digmon, Warden et.al., 76-6799 U. S. 1/16/78; In Smith, the Respondant there contented that the Petitioner fail to exhause State remedies at appellate level, this court found otherwise; and Reverse and remand the case to the District Court, As it goes without saying that the petitioner invokes this Honorable Court Supervisory authoirty in this matter and also adopt the same rationale as enunciated by this court in Pennsylvania ex rel. Herman V Claudy, 350 U. S. 116, 118..... " (A) conviction following trial or on a Plea of Guilty based on a Confession extorted by violence or by Mental Coercion is invalid under federal Due Process Clause ".

ARGUMENT II

THAT PETITIONER'S TRIAL COUNSEL WAS INCOMPETENT AND DID NOT PROVIDE HIM WITH GENEUINE REPRESENTATION VIOLATED HIS FIFTH SIXTH, AND FOURTEENTH AMENDMENTTS TO EQUAL PROTECTION AND DUE PROCESS.

" In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense ". Sixth Amendment of the United States Constitution.

The above is one of the Safeguards of the Sixth Amendment deemed necess ary to insure fundamental human rights of life and liberty . This Court has often repeated it time and time again, as was said in Johnso V Zerbst, Supra, " It embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself where brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experience and learned counsel. That which is simple, orderly, and necessary

to a lawyer to the untrained layman... may appear intricate, complex, and mystericus********** even the intelligent and educated layman has small and sometimes no skill in the science of law **** he requires the guilding hand of counsel at every step in the proceedings against him " (Power V Alabama, 287 U. S. 45) In Johnson, Supra, The defendant was indigent and proceeded to trial without the benefit of counsel . He argued that because he was not affored the appointment of counsel, and that he was ignorant of his right to counsel , and that he was incapable of perserving his legal and constitutional Rights during trial; and that he was equally ignorant of the proceedings to obtaining N ew Trial or Appeal and the time limits governing both; .

It is to the Petitioner's best knowledge and understanding that this court has not establish any step-by-step-type of guildlines or procedures by which to determine an attorney's level of competency , excepting the Normal Competency Test established in McMann V Richardson, 397 U.S. 759.as this standard is applicable to both , trial counsel conduct as well as Guilty-Plea Trial, but with a slightly different cannotation attached , and that being whether the guilty plea was voluntarily given. In Lefkowitz v Newsome, No.73-1627__U.S.__12/11/74 This Court Granted Certiorari on the question of a defendant's right to file a Federal Habeas Corpus Petition challenging the lawfulness of a search or the voluntariness of a confession or presenting other constitutional claims when the state provides for appellate review of those issues after a guilty plea. Because Maryland is one of those states which permits appeals in Guilty Pleas, It makes it Mandatory that Trial Counsel advise the defendant of that right. Rule 719 b (6) Lucas V Warden, 10 Md. App. 359. Petitioner contends that although counsel was hired and was assigned to his case well o ver 24 months he did nothing which would indicate that he intended to proceed to trial, while assuring the petitioner all the way until trial time , at the trial table that he would proceed to trial, and at the last

moment compelled the Petitioner to Plea-Guilty , urging or insisting that the prosecutor was going to prosecute his wife. Petitioner argues that he was denied the Effective Geneuine Assistance of Counsel under the Sixth and Fourteenth Amendments of the United States Constitution viewing from counsel's total performance. If petitioner's other constitutional rights are foreclosed as argued by the Respondant, because of the Guilty Plea and it's accompanied waiver of constitutional violations, then petitioner has not knowlingly, intelligently, nor voluntarily waived any rights diliberately nor intentionally, therefore, His conviction shouldnot stand.

CONCLUSION

It is for the foregoing reasons, It is Respectfully submitted that the Petition for a Writ of Certiorari to the United States Court of Appeals For The Fourth Circuit should be accepted.

Respectfully Submitted

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